

EXHIBIT 55

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

<div>Page 1</div> <div>UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA</div> <div>-----</div> <div>In Re: Bair Hugger Forced Air Warming Products Liability Litigation</div> <div>This Document Relates To: All Actions MDL No. 15-2666 (JNE/FLM)</div> <div>-----</div> <div>DEPOSITION OF DR. ANDREA KURZ VOLUME I, PAGES 1 - 235 JANUARY 12, 2017</div> <div>(The following is the deposition of DR. ANDREA KURZ, taken pursuant to Notice of Taking Deposition, via videotape, at the Cleveland Clinic, E Building, Conference Room E3-40B, 9105 Cedar Avenue, Cleveland, Ohio, commencing at approximately 10:11 o'clock a.m., January 12, 2017.)</div>	<div>Page 3</div> <div>INDEX</div> <table><tr><th>EXHIBITS</th><th>DESCRIPTION</th><th>PAGE MARKED</th></tr><tr><td>Ex 237</td><td>Kurz curriculum vitae</td><td>7</td></tr><tr><td>238</td><td>Article, Departmental and Institutional Strategies for Reducing Fraud in Clinical Research, by Sessler, et al</td><td>27</td></tr><tr><td>239</td><td>E-mail string, 3MBH01534509</td><td>54</td></tr><tr><td>240</td><td>PowerPoint, LMA PerfecTemp vs. Forced-air Warming</td><td>78</td></tr><tr><td>241</td><td>Article, Effects of preoperative warming on the incidence of wound infection after clean surgery: a randomized controlled study, by Melling, et al</td><td>92</td></tr><tr><td>242</td><td>Article, PERIOPERATIVE NORMO- THERMIA TO REDUCE THE INCIDENCE OF SURGICAL-WOUND INFECTION AND SHORTEN HOSPITALIZATION, by Kurz, et al</td><td>99</td></tr><tr><td>243</td><td>Article, Intraoperative Core Temperature Patterns, Transfusion Requirement, and Hospital Duration in Patients Warmed with Forced Air, by Sun, et al</td><td>125</td></tr></table>	EXHIBITS	DESCRIPTION	PAGE MARKED	Ex 237	Kurz curriculum vitae	7	238	Article, Departmental and Institutional Strategies for Reducing Fraud in Clinical Research, by Sessler, et al	27	239	E-mail string, 3MBH01534509	54	240	PowerPoint, LMA PerfecTemp vs. Forced-air Warming	78	241	Article, Effects of preoperative warming on the incidence of wound infection after clean surgery: a randomized controlled study, by Melling, et al	92	242	Article, PERIOPERATIVE NORMO- THERMIA TO REDUCE THE INCIDENCE OF SURGICAL-WOUND INFECTION AND SHORTEN HOSPITALIZATION, by Kurz, et al	99	243	Article, Intraoperative Core Temperature Patterns, Transfusion Requirement, and Hospital Duration in Patients Warmed with Forced Air, by Sun, et al	125
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<div>Page 2</div> <div>1 APPEARANCES:</div> <div>2 On Behalf of the Plaintiffs:</div> <div>3 Jan M. Conlin</div> <div>4 CIRESI CONLIN L.L.P.</div> <div>5 225 South 6th Street, Suite 4600</div> <div>6 Minneapolis, Minnesota 55402</div> <div>7</div> <div>8 Gabriel Assaad</div> <div>9 KENNEDY HODGES</div> <div>10 4409 Montrose Boulevard, Suite 200</div> <div>11 Houston, Texas 77006</div> <div>12 On Behalf of Defendants:</div> <div>13 Corey L. Gordon and Peter J. Goss</div> <div>14 BLACKWELL BURKE P.A.</div> <div>15 432 South Seventh Street, Suite 2500</div> <div>16 Minneapolis, Minnesota 55415</div> <div>17</div> <div>18 On Behalf of the Deponent:</div> <div>19 Sandra M. DiFranco</div> <div>20 Cleveland Clinic Law Department</div> <div>21 2070 East 90th Street</div> <div>22 Cleveland, Ohio 44195</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 4</div> <div>1 244 Article, Resistive-Polymer Versus</div> <div>2 Forced-Air Warming: Comparable</div> <div>3 Efficacy in Orthopedic Patients,</div> <div>4 by Brandt, et al 136</div> <div>5 245 Article, Compliance with Surgical</div> <div>6 Care Improvement Project for</div> <div>7 Body Temperature Management</div> <div>8 (SCIP Inf-10) Is Associated with</div> <div>9 Improved Clinical Outcomes, by</div> <div>10 Scott, et al 168</div> <div>11 246 E-mail, 3MBH01138976 183</div> <div>12 247 E-mail string, 3M00510095-7 230</div> <div>13</div> <div>14</div> <div>15</div> <div>16 WITNESS EXAMINATION BY PAGE</div> <div>17 Dr. Andrea Kurz Mr. Assaad 5</div> <div>18 Mr. Gordon 189</div> <div>19 Mr. Assaad 235</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>																								

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<p style="text-align: right;">Page 85</p> <p>1 A. -- in clinical use.</p> <p>2 Q. And what was your response?</p> <p>3 A. At that point in time it was that I'm</p> <p>4 unsure.</p> <p>5 Q. And at some point later on you changed your</p> <p>6 opinion?</p> <p>7 A. Not yet. I'm actually --</p> <p>8 We are in the process of pulling data to</p> <p>9 compare the devices.</p> <p>10 Q. But at the time of the changeover, you</p> <p>11 thought it was as -- as efficacious as the Bair</p> <p>12 Hugger.</p> <p>13 A. I -- at -- the advice --</p> <p>14 My advice was it is as efficacious; however,</p> <p>15 after we've used it for six months, our CRNA thought</p> <p>16 it wouldn't be.</p> <p>17 Q. Your -- excuse me?</p> <p>18 A. My providers in the room thought it wouldn't</p> <p>19 be.</p> <p>20 Q. Oh. And their basis was what?</p> <p>21 A. Core temperature at the end of surgery.</p> <p>22 Q. Is there a study being performed between the</p> <p>23 efficacy of Mistral versus the efficacy of Bair</p> <p>24 Hugger?</p> <p>25 A. Not yet.</p>	<p style="text-align: right;">Page 87</p> <p>1 normothermia.</p> <p>2 Prior to your 1996 study, was there any</p> <p>3 evidence that normothermia reduced the incidence of</p> <p>4 infections?</p> <p>5 A. I don't think that there was a clinical</p> <p>6 study before that.</p> <p>7 Q. Now my understanding is that you're of the</p> <p>8 opinion that normothermia reduces -- normothermia</p> <p>9 during the intraoperative period, maintaining</p> <p>10 normothermia reduces the risk of wound infection.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. It also reduces the risk of</p> <p>13 transfusion.</p> <p>14 A. Yes.</p> <p>15 Q. And also -- I'm not sure if this is still</p> <p>16 your opinion today or not -- reduces the -- the length</p> <p>17 of stay.</p> <p>18 A. I would have doubts in that regard.</p> <p>19 Q. Okay. So it would be fair to say that the</p> <p>20 current evidence does -- does not -- the current</p> <p>21 reli -- the current reliable evidence -- strike that.</p> <p>22 There's not enough current reliable evidence</p> <p>23 to formulate the opinion that maintaining normothermia</p> <p>24 during the intraoperative period reduces the length of</p> <p>25 stay for patients.</p>
<p style="text-align: right;">Page 86</p> <p>1 Q. When you say "not yet," is it -- is it</p> <p>2 upcoming?</p> <p>3 A. I've had it planned for more than half a</p> <p>4 year but just didn't get to it. So it should be</p> <p>5 upcoming.</p> <p>6 Q. Who is sponsoring it?</p> <p>7 A. Nobody. It's a quality-improvement project</p> <p>8 within our department.</p> <p>9 Q. But sitting here today, there's no evidence</p> <p>10 that suggests one device is more efficacious than the</p> <p>11 other.</p> <p>12 A. No.</p> <p>13 Q. Was Dr. Sessler part of the agree -- the</p> <p>14 discussion with respect to the changeover between the</p> <p>15 Bair Hugger unit and the Mistral unit?</p> <p>16 A. He was asked about his opinion in regard to</p> <p>17 efficacy, yes.</p> <p>18 Q. Okay. What was his opinion, do you recall?</p> <p>19 A. Same thing --</p> <p>20 Actually, very similar to mine, that he also</p> <p>21 thought it would be as -- it will be very comparable</p> <p>22 to the Bair Hugger --</p> <p>23 Q. Okay.</p> <p>24 A. -- in regards to heat transfer.</p> <p>25 Q. Let's talk about your favorite subject,</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I would agree, yes.</p> <p>2 Q. Now you corrected me before with respect to</p> <p>3 hypothermia causes -- we were --</p> <p>4 We were talking about the 2015 article in</p> <p>5 Anesthesia and I said that it reduces bleeding, you</p> <p>6 said no, reduces the risk of transfusion.</p> <p>7 A. Correct.</p> <p>8 Q. Is there a difference?</p> <p>9 A. The only difference is that bleeding is very</p> <p>10 difficult to evaluate so there will be a very weak</p> <p>11 outcome, but of course you are correct, if you need</p> <p>12 more transfusions, you should bleed more.</p> <p>13 Q. Okay. In the 1960 study -- 1996 study, did</p> <p>14 you look at bleeding as well, or just --</p> <p>15 A. Not in that particular study.</p> <p>16 Q. Okay. And, of course, one of the benefits</p> <p>17 of -- of warming a patient is patient comfort.</p> <p>18 A. I would not say "of course," but it should</p> <p>19 be.</p> <p>20 Q. Okay. Why wouldn't you say "of course?"</p> <p>21 A. I'm not aware that there are lots of studies</p> <p>22 that really looked at patient comfort.</p> <p>23 Q. So there's no evidence today that</p> <p>24 maintaining normothermia during the intraoperative</p> <p>25 period increases patient com -- comfort?</p>

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<p>1 Q. Okay. Do you know how many there were?</p> <p>2 A. No, I don't.</p> <p>3 Q. Is there any way to find out?</p> <p>4 A. I doubt after 20 years.</p> <p>5 Q. Is the data still available?</p> <p>6 A. I doubt it.</p> <p>7 Q. Okay. So if there were any, it would be</p> <p>8 very few.</p> <p>9 A. Yes, absolutely.</p> <p>10 Q. Okay. If there were any. You're not even</p> <p>11 sure there were any at all.</p> <p>12 A. I don't.</p> <p>13 Q. Okay. So sitting here today, there is no</p> <p>14 evidence for you to offer the opinion that maintaining</p> <p>15 normothermia reduces the incidence of deep-tissue</p> <p>16 infection.</p> <p>17 MR. GORDON: Object to the form of the</p> <p>18 question, also lack of foundation.</p> <p>19 A. I wouldn't phrase it that way.</p> <p>20 Q. How would you phrase it?</p> <p>21 A. I'm not sure. I'm not --</p> <p>22 That's one I would have to think about. I</p> <p>23 don't know.</p> <p>24 Q. Well is there any evidence --</p> <p>25 A. I just don't know.</p>	<p>1 A. Yes.</p> <p>2 Q. They use the Bair Hugger; correct?</p> <p>3 A. Yes.</p> <p>4 Q. They promote the Bair Hugger in orthopedic</p> <p>5 surgery; correct?</p> <p>6 A. Yeah.</p> <p>7 Q. Okay. Have you ever told them that there's</p> <p>8 no evidence that 3M --</p> <p>9 Or have you ever told them that there's</p> <p>10 evidence that maintaining normothermia reduces the</p> <p>11 incidence of periprosthetic joint infection?</p> <p>12 A. No.</p> <p>13 Q. Have you ever informed them that there is no</p> <p>14 evidence that periprosthetic -- maintaining</p> <p>15 normothermia reduces the incidence of periprosthetic</p> <p>16 joint infection?</p> <p>17 A. Yes.</p> <p>18 Q. You have told them that?</p> <p>19 A. Yeah, of course. My paper says at the end</p> <p>20 that -- or it should say that every -- every</p> <p>21 patient --</p> <p>22 Advice always only applies to the patient</p> <p>23 population tested.</p> <p>24 Q. I understand that. But you --</p> <p>25 A. I can't advise anybody that it would work in</p>
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<p>1 Q. Is there any evidence of any research that</p> <p>2 you've done or read that indicates that maintaining</p> <p>3 normothermia reduces the incidence of a deep-tissue</p> <p>4 infection?</p> <p>5 A. I doubt there is, --</p> <p>6 Q. Okay.</p> <p>7 A. -- but I don't know.</p> <p>8 Q. And you agree with me that there's no</p> <p>9 evidence in the literature that you're aware of that</p> <p>10 indicates that maintaining normothermia reduces the</p> <p>11 incidence of a periprosthetic joint infection.</p> <p>12 MR. GORDON: Object to the form of the</p> <p>13 question, also lack of foundation.</p> <p>14 A. So you're saying no -- there's no evidence</p> <p>15 that normothermia decreases the incidence of --</p> <p>16 Q. Maintaining normo --</p> <p>17 Of periprosthetic joint infections.</p> <p>18 MS. DIFRANCO: Are you asking what she's</p> <p>19 done or --</p> <p>20 I mean you're getting into some expert</p> <p>21 testimony here.</p> <p>22 MR. ASSAAD: Well I'm not, and I --</p> <p>23 If you want me to lay more foundation, I</p> <p>24 will -- I can. Fine, I'll lay foundation.</p> <p>25 Q. You advised for 3M; correct?</p>	<p>1 eye surgery now or in orthopedic. I don't know.</p> <p>2 Q. Well what can you advise people then, that</p> <p>3 it only works in colorectal?</p> <p>4 A. Strictly spoken, yes.</p> <p>5 Q. Okay. But you're --</p> <p>6 A. For that indication.</p> <p>7 Q. For what indication?</p> <p>8 A. Infection.</p> <p>9 Q. Okay.</p> <p>10 A. Might be different for other indications.</p> <p>11 Q. Okay. Let's talk about infection. So</p> <p>12 you've never --</p> <p>13 Have you ever advised 3M that there's no</p> <p>14 study that supports -- or that -- that you can advise</p> <p>15 them that forced-air warming and maintaining normo --</p> <p>16 to maintain normothermia is required for</p> <p>17 periprosthetic -- or for orthopedic surgeries to</p> <p>18 reduce periprosthetic joint infection?</p> <p>19 A. Your question is complicated. So I have</p> <p>20 not --</p> <p>21 Yeah, it's hard for me to understand the</p> <p>22 question. I think I didn't advise them to</p> <p>23 specifically use it for decrease in periprosthetic</p> <p>24 infections.</p> <p>25 Q. Okay. You're aware that Bair Hugger -- or</p>

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<p>1 is true either, because don't forget, it's a 2 retrospective study and not one of the best-done 3 either. So you -- 4 Q. Based on in today's standards. 5 A. Based on in today's standards. 6 Q. Okay. It might have been good standards 7 back in 1996. 8 A. There's no discussion about it because the 9 data would not have been available in '96. 10 Q. Okay. 11 A. So we still only have the old data. 12 Q. Okay. And Dr. Sessler has mentioned in an 13 e-mail before, in today's standards and with respect 14 to reliability of studies, that he probably wouldn't 15 have published the 1996 Kurz paper. Do you agree with 16 him? 17 A. Absolutely. 18 Q. Okay. 19 A. I would not have either. 20 Q. So without that paper meeting today's 21 standards, do you agree with me that there's no 22 scientific evidence today that active warming or 23 maintaining normothermia reduces the incidence of 24 infection? 25 A. If -- I mean if -- if you exclude the only</p>	<p>1 A. Very little. 2 Q. None; correct? 3 A. I'm not quite sure. I'm -- I'm still -- I'm 4 still debating about blood loss and other studies. 5 Q. Talking about infection. 6 A. Yeah. 7 Q. So I just want to get this clear for the 8 record. You agree with me that, in today's scientific 9 community, that there's no evidence, publishable 10 evidence that supports that maintaining normothermia 11 reduces infection rates. You agree with that 12 statement. 13 A. Still have problems with that statement. 14 Q. Do you want me to rephrase? 15 A. Yeah. Do that, please. 16 Q. In today's scientific standards, there is no 17 reliable evidence that supports that maintaining 18 normothermia reduces the incidence of infection. 19 A. That is correct. 20 Q. Thank you. 21 MR. ASSAAD: Take a break. I need to use 22 the restroom. 23 THE REPORTER: Off the record, please. 24 (Recess taken.) 25 BY MR. ASSAAD:</p>
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<p>1 paper that shows that, then there is no evidence. 2 Q. Well we discussed later there's only one 3 paper regarding infection rates; correct? 4 A. You could -- 5 You have a second one which you excluded: 6 the Melling paper. 7 Q. Well you couldn't tell me whether or not 8 that was intraoperative warming; correct? 9 MR. GORDON: Objection. 10 A. It doesn't matter. 11 Q. Okay. 12 A. It does not matter. We are talking about 13 maintenance of normothermia, -- 14 Q. Okay. 15 A. -- whether you warm the patients -- 16 Q. Do you think Melling was a good study? 17 A. It was an okay study for the time. 18 Q. Would you agree with me that that wouldn't 19 be publishable today? 20 A. I absolutely would agree with you. 21 Q. Okay. So sitting here today, what paper 22 that could -- that -- what evidence that could be 23 published today supports active warming in the -- in 24 the active warming and normothermia that reduces the 25 incidence of infection?</p>	<p>1 Q. Going -- going back to my last question: In 2 fact, as early as 2012 you notified 3M that the 3 current research guidelines for reliability and that 4 the previous studies were not done -- were done with 5 much -- I'm sorry. Rephrase. 6 Back in 2012 you notified 3M that, at the 7 KOL meeting in Washington, that the evidence for 8 hypothermia-related complications mostly does not meet 9 current research guidelines for reliability and that 10 previous studies were done with much larger 11 temperature differences than are currently allowed. 12 Do you recall saying that to 3M? 13 A. That is correct. 14 Q. Okay. And are you aware since that time 3M 15 has continued to cite your paper for its marketing 16 purposes with respect to its claim that forced-air 17 warming is a way to maintain normothermia, which 18 reduces the incidence of infection? 19 A. I agree with this. 20 Q. You agree that you're aware that mar -- that 21 they continue their marketing. 22 A. Yes. And I agree that they do that. I do 23 the same. 24 Q. Okay. And you've been requesting from them 25 since 2012, you and Dr. Sessler, to fund studies to --</p>

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